

SPECIAL MEETING OF BERKELEY COUNTY COUNCIL

July 26, 2011

A special workshop meeting of Berkeley County Council was held on Tuesday, **July 26, 2011**, at 6:00 p.m., in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

PRESENT: Mr. Daniel W. Davis, County Supervisor, Chairman; Mr. Steve C. Davis, Council Member District No. 8, Vice Chairman; Mr. Phillip Farley, Council Member District No. 1; Mr. Timothy J. Callanan, Council Member District No. 2; Mr. Robert O. Call, Jr., Council Member District No. 3; Mrs. Cathy S. Davis, Council Member District No. 4; Mr. Dennis L. Fish, Council Member District No. 5; Mr. Jack H. Schurlknight, Council Member District No. 6; Mr. Caldwell Pinckney, Jr., Council Member District No. 7; Ms. Nicole Scott Ewing, County Attorney; and Ms. Catherine Windham, Interim Clerk of Council.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

CALL TO ORDER

Chairman Daniel Davis called the meeting to order. Council Member Pinckney gave the Invocation, and Council Member Farley led in the Pledge of Allegiance to the Flag of the United States of America.

A. Mr. Bobby Bowers, Re: Discussion of Redistricting Process and Issues

Chairman Daniel Davis: "Ok; this is a good turnout. As all of you know, this is just a workshop. We're gonna, for the most part, make it sort of informal. We have Bobby Bowers with us. I think most of you on County Council probably know Bobby, because he is a fairly frequent visitor to the County Association Meetings. For those of you who don't know, Mr. Bowers is the State Demographer, and has, for a number of years, led the state."

Mr. Bowers: "Don't tell how many."

Chairman Daniel Davis: "I think, I remember you. I was around back in 1975, and I remember you were well established back then. Not that that has any reflection. You were a very young Demographer back then."

Mr. Bowers: "Thank you; I feel like a young Demographer today."

Chairman Daniel Davis: "But, he's been through many of these redistrictings and, of course, his office handles the reapportionment at the state level, so he is a very busy man this

time of year. But, there's not anybody in the state more knowledgeable about redistricting, so he's graciously agreed to come down and have his workshop to tell you what he knows in a short period of time, and then be available for any questions that you might have. So, I'm just going to go ahead and turn it over to Bobby. He has done this many times, and he knows what he needs to discuss."

Mr. Bowers: "Thank you, Mr. Chairman. First thing I'm gonna do is thank you for participating like you did in the 2010 Census. If you noticed, what you might hear tonight, you may hear again at the County Association Meetings. So, if I say the same thing again, act like you hadn't heard it before. Smile, and act like you never heard it before, because they've got me on five different programs on Monday. Somewhere you'll come across it down there. First of all, the state did a fabulous job responding to the Census. I believe, we missed a billion-and-a-half – two-billion dollars in the last 10 years, because of the undercount in the Census. This year, we tied for North Carolina with the greatest increase in the census state nationwide. And, I honestly believe since we got that good a count, you've seen what we got. We got another Congressman that they are debating right now where to put it, and I believe over the next 10 years, in state, county, city monies – this is not stimulus money, this is entitlement money that comes out of Washington based on the Census. I believe we'll get between two and three billion dollars over 10 years. Dan Cooper, when he put \$1,000,000 in my budget for that, we only spent \$750,000. He said that was the best investment he believed we had ever made. So, we've got a good census. The County, the school district, the COG (Council of Governments), the city all worked together, a coalition to get a good Census to them. And, that's why we're here now, because the state law says once the Census comes out, the counties must redistrict to a population deviation not to exceed 10 percent in a reasonable time. That reasonable time is before your next election. We are recommending that you have a plan in place by the end of October; reason being, because the Justice Department has 60 days to review the plan. If, during that 60 days, they should ask you for additional information, they've got another 60 days after they get the additional information. And so, it's good to document everything that you do, every meeting you have, all the stuff that comes out in the press. Document all that to send to the US Justice Department, because if figure 60 now, that's November, December, January, February. Filing opens March 15 or 16, I think, and so, you've got to have a plan in place pre-cleared by the Justice Department before then. Secondly, I'd like to get you to adopt the criteria that I recommended to you. So, I want you to formally adopt these criteria, so we can say all the plans that were looked at were developed according to these criteria. That's going to be one question they'll ask you. Did you have criteria when you drew the plan? Absolutely, we had criteria. We don't work without a criteria.

The list of "Criteria for Developing Plans: Redistricting 2010" was distributed to each Council Member.

Mr. Bowers: "The first criteria, of course, is the constitutional requirement of one person, one vote. That's where the state law says you gotta be less than 10 percent. That means the total deviation less than 10 percent. Don't do like one of my county people did in another part of the state. He called me and said that they had drawn a perfect plan, and I said how do you draw a perfect plan? He said, the deviation answer is zero. I said, how did you get zero? He

said, you add all the pluses and all the minuses and the answer's zero. I said, I've been drawing the perfect plan all my life and didn't know it. I said, that's not how you figure deviation. Deviation is the largest positive and the largest negative deviation added without regard to that algebraic sign. You've got +5 and a -2, your deviation is 6. You add that without the plus or minus sign."

Mr. Bowers: "The second one is adherence to the 1965 Voting Rights Act as amended and as court-ordered amended. That means that anything you do cannot diminish the rights and opportunity for minorities to elect candidates of their choice. The Justice Department – by the way, that Voting Rights Act has been extended to the Year 2032. So, we are going to be under it awhile longer, because of our history of not participating in allowing minorities to have representation like they probably should have all this time. So, what we've got to do is try as best we can to at least protect minority districts so you can have minorities with an opportunity to elect candidates of their choice. I will tell you this, this new Justice Department has got the same electronic system that I've got that you've got. So, when we send the plan up there, they will want the base map data, and they will be putting that data in a plan. And, if they can do better than we've done, they will turn our plan down. I can assure you of that now. So, we will be in a position to try to do the best plan we can, deviation under 10. Let me say a little bit right now. You can deviate to increase the minority population by use of that deviation. In other words, if you leave a minority district artificially lower, as long as you keep the total under 10, you can do that, because Justice is gonna look at deviation only when it affects the minority population. And so, if you can increase minority percentages – you've got two minorities on Council. The percentages you've got in this plan, I think, they're fine, but maybe not for their successors with the growth you had. And so, you're not just looking at a plan for minorities for the incumbents you've got. It's a plan for minorities for the future too. That's what's critical when you look at the Justice Department. The third one is you have to have parts of the districts contiguous. With a lake like you've got, it makes it look like a kind of funny and not contiguous, but we can solve that by putting a lake in there. And, you show the lake in that district, and they'll think there's one great big district, because that's the way the Census boundaries have gone. Don't do like they did in a case up in Georgia. A young lady was from Minnesota that drew the plans for the planning. In the first place, she didn't know Georgia was under the Voting Rights Act. That was failure Number One. Second place, she didn't know the definition to the word contiguous. She had one big blob in the middle, and five blobs didn't touch nothing, and when I called that to the Judge's attention, I referred to it as a measles divot. He started chuckling, and he said, let me write that down. I may want to remember that in the future."

[Laughter]

Mr. Bowers: "And, when I did that, my lawyer looked up there, and he gave me the thumbs up. He said, '*I knew we won the case when you pulled that rabbit out of the hat.*' And, we did in less than two weeks. So, you want it to be contiguous, the district structure. Then, you've gotta have public meetings. That's what this is right here. The first public meeting is the first public meeting of the workshop. You need to have public meetings, and you document those public meetings to show that you had opportunity for public to have input. I gotta say this, for the right finishing board that's going to be represented, if possible, you need to try to not split many precincts. That's not plausible when you've gotta draw the County into eight districts, and

you gotta protect minorities, and you've gotta keep deviation down. It's not as important now that you don't split precincts. What is important is that you keep the right to vote in the right portion of the precinct. That can be done electronically now. We are planning right now a staff. I've already got the system put in place. We are going to be GEO coding every registered voter so that we can plug it in and tell the registration boards which district they belong in. We've done that in the past. We usually do that automatically, because of the Congress, House and Senate. We do that for the county. Some counties have got the capability to do that themselves. We do that on request from the county. We'll send it back, since they're the primary source of information for them to make the proper changes. Am I going too fast for you? They tell me in court to slow down half the time."

[Laughter]

Mr. Bowers: "And then you can maintain some constituents' consistency. Can any of ya'll tell me what that means? It means that each of you as Council persons has got the right to some expectation of some consistency of who you represent, and each of your representatives have got some right to expect some consistency of who represents them. I said that in Federal Court. After I'd said it the third time, the other lawyer at one meeting answered the fourth time, and the judge – he stuttered, '*d-d-d-d-don't ask him again; we all three know what that means*'."

[Laughter]

Mr. Bowers: "It is legal to separate incomes. And, the laws have shown that it is perfectly legal to separate incumbents as long as it does not adversely affect the Constitution requirement of one person, one vote, or does not adversely affect minority rights for representation, and does not adversely affect the contiguousness. So, you can separate incumbents. You know why? Their not the ones who are gonna vote on the plan. I'll tell somebody that when I go out of state, and there's seven on that council, you can bet that I'm gonna have four of them happy, because it takes the same number to pay me as it takes to vote on that plan. And, I'm gonna have four of them happy before I leave."

[Laughter]

Mr. Bowers: "And then, you solicit the public input into the plan, which you are doing now. That, I want you to adopt formerly, so we'll have it on the record. The next thing, what you do."

Ms. Ewing: "Your redistricting guidelines here..."

Mr. Bowers: "Yeah?"

Ms. Ewing: "...are these in order of priority? I mean, obviously..."

Mr. Bowers: "Absolutely."

Ms. Ewing: "...obviously Number One and Number Two are."

Mr. Bowers: "One, Two and Three are the top three."

Ms. Ewing: "Ok."

Mr. Bowers: "The rest of them kind of trail if you can do it. If you can't do it, you still gotta do the top three."

THOSE BEING:

1. Adhere to the court-ordered constitutional requirement of one person, one vote.
 - a. County Councils must adhere to a state law of population variance under 10%.
2. Adherence to the 1965 Voting Rights Act as amended and controlling court decisions.
3. Ensure that parts of the districts are contiguous.

Mr. Bowers: "And, if at all possible you can separate and the incumbents should fall right in there, because, you know, you've got nine here. You've got to have five votes to get it passed, so."

Ms. Ewing: "That was my understanding. I just wanted to make sure that the top three..."

Mr. Bowers: "You did good. That's the right time. Once you get the Census data, we develop what is called the benchmark plan, which is up there (on the screen). The benchmark plan is nothing but your present plan that you're operating under right now, with the new 2010 numbers on it. Don't worry about what it was in 2000. It's what your districts are now with the 2010 numbers. And, if you look at that plan up there on the screen, you will see you've got 27.48 percent total deviation. You've got District 3 with 14.41 percent too high, so it's got to get rid of 3,200 people. District 1 is (-) 13.07 percent low. It's got to pick up (-) 2,906 people. District 2 would be alright as it is, but there's a problem. Once you change one district, you've gotta go change some more, so it has a domino effect through the whole thing. I was in a meeting with five Councilmen one time, and the top two districts were very high. The bottom two districts were very low, and the guy in the middle said, *'my district is perfect, isn't it?'* And, I said, *'yeah, but wait until I get all them people from the top two districts down to the bottom two'*, and he looked at it and said, *'I ain't gonna recognize it when you get through with them.'* I said, *'No, your're not, you're gonna be lucky to be in it.'* So, if you look, right there is the lowest district, District 1, (-) 13.07 (percent), and here is your highest district, 14.41% (District 3); (Districts) 1 and 3. Now, that district could stand alone, those two could stand alone (pointing to the chart). The problem is you've got District 8 right here, low; District 1, low; so, you've got to do a lot of shuffling to get that population from the two high districts into the other

districts, and you have to go through some of the districts that are perfect, because you'll have some changes there. You also notice that based on the benchmark plan that the minority shifted to the left just a tad. The minority population in District 7 is 47.1 percent (% White) and in District 8, it's 48.05 percent (% White). District 7 is (-) 314 people low. District 8 is (-) 2,129 low. Now, the goal is going to be to bring this deviation down under 10 percent, and at the same time, try to maintain these two districts as best you can for opportunity for minorities to elect candidates of their choice. That is the benchmark number. We've got to be in and above that benchmark number, but I would recommend, if we can, to have a lower deviation in those two districts to try to boost them to up to as close to 50 percent as you can in total population, because if you look over farther, you'll notice that when you get over to the voting age population, that those two districts only have 46.87 (percent Black in District 7) and 45.77 (percent Black in District 8) minority voting age population. That no longer is just referred to as Black population. It's now referred to by Justice as Non-Hispanic Black population; Non-Hispanic Black population. So, this is the goal. Try to get the deviation down, and try to maintain those two minorities and, at the same time, keep incumbents in their present district. Go to the draft plat (Proposed Redistricting Plan). You will notice that the deviation is much lower in those districts. In fact, you've got (-) 2.84 percent on one (District 8), and 1.84 percent on the other (District 6). So, you have a total deviation there of about 5.8 percent – moving in that range. That's a good deviation, but go over to your minority district. (District) 7 is only 46.73 percent (White), and (District) 8 is only 48.51 percent (White). I would make a suggestion at this point, because Justice is not gonna look at deviation. Justice is not gonna look at deviation, unless it's secondary for declining a claim. I would make the recommendation that you take those two districts and try to diminish the minority, increase the minority population by diminishing the non-minority population in those two districts, allowing the deviation to be higher, but still keep the total under 10 percent. You can do that by pulling, putting some of these people out of here into these other districts, as long as you keep them under 10 percent. Justice is gonna review that. They're gonna do it, whether we do it or not, but I'd like for us to do it first."

Council Member Callanan: "What's a good minority percentage then?"

Mr. Bowers: "You want to get it close to 50 percent as you can in total population. Right in these two right here (pointing to Proposed Redistricting Plan), you probably will not be able to get both of them at exactly 50 percent, and keep that deviation under 10, but you probably gonna have to give a good shot at it. I can promise you. We can help you do that. We'll look at it when you get your plans. I would suggest doing that. It's probably fine for the few minorities you've got on here as incumbents, but we're looking not just for the next election for the incumbent, but suppose these guys don't run again. You won't have some minority opportunity in those districts in regards of who did that. That's why I would suggest doing that."

Council Member Call: "Let me ask a question, if I can stop you, about the 10 percent deviation. That is a state law. How does that affect the Justice Department?"

Mr. Bowers: "It doesn't, but if you come in over 10 percent, and anybody challenges ya, then you are gonna lose, because state law says you've gotta be under 10 percent."

Council Member Call: “What if the federal – if the Justice Department approves...”

Mr. Bowers: “In this particular case, they will adhere to the state law.”

Council Member Call: “Ok; thank you.”

Mr. Bowers: “I’ll give you an example. Years ago, we had one county that, when we put the new numbers in there, their deviation was 10.13 percent. We had to redraw the whole county to get it under 10 percent. So, we’re doing state and federal law at the same time. The federal law is the Voting Rights Act, basically. We’ve got cities that have not redistricted in 20 years, because the Justice Department only reviews change. If you didn’t have to make a change, there would be nothing for them to review, but since you’ve got to make a change by state law, they are gonna review it. So, once they review it, that’s when they look at the minority for citations. You’ll notice that this plan is, I think, a good plan, but I would say, making the suggestions on (Districts) 7 and 8 would improve the opportunity for Justice to look favorably upon it, particularly with minority support when this plan goes to Washington. You’ve got good deviations in these districts, but there can be, you can push that up around 6 percent. You can push that one up around 6 percent, as long as you keep the rest of them under 4, so you got under 10 percent deviation.”

Council Member Callanan: “I think you’re making an assumption that we can gerrymander these districts...”

Mr. Bowers: “Gerry was my brother. He’s dead. It’s called Bobbymandering now; that’s me.”

[Laughter]

Mr. Bowers: “But, that’s not Gerrymandering.”

Council Member Callanan: “Well, whatever you want to call it. I don’t know. You run into a situation where in order to get a pocket of minority voters, you have to go through a larger pocket of white voters. I’m looking at this. I just can’t figure out where, if you look at the edges of the districts, I can’t figure out where you’re gonna get the votes, where you’re gonna get the population.”

Mr. Bowers: “That’s where...”

Council Member Callanan: “I mean, unless you – you would have to make it subordinate to something like what do you call it? Constituent consistency.”

Mr. Bowers: “Yeah.”

Council Member Callanan: “That’s the incumbent protection part?”

Mr. Bowers: “Yeah.”

Council Member Callanan: “You’d have to make that subordinate to that.”

Mr. Bowers: “See, you don’t have to find minority population to pull in those two districts. You can take non-minority population out of two districts.”

Council Member Steve Davis: “That’s correct.”

Council Member Callanan: “Well, that’s the other thing. I don’t know where you’re gonna pull that out of.”

Council Member Steve Davis: “I’ve got some great suggestions I’m gonna share with you.”

Council Member Callanan: “Alright.”

Mr. Bowers: “I think that can be done, because you can make a trade-off of districts, pull non-minorities out where you can find someone to move. Let me say this. Anything you add to it that has the minority population of over 50 percent is going to raise it. Anything you take away from it that’s got a minority population of less than 50 percent is going to raise it also. So, you’ve got two ways to maneuver in that process. We used to do that all the time until the court started hollering. As long as you got the Justice Department the first one to go through, I would take that risk.”

Ms. Ewing: “Mr. Callanan, Mr. Bowers if it is ok, Mr. Bowers went over this list before you got here.”

Mr. Bowers: “Yeah.”

Ms. Ewing: “The first three (Criteria for Developing Plans: Redistricting 2010), we have to adhere to, the last 4, 5, 6 and 7 – well, other than public input; we have to have public input, but 4, 5 and 6 are goals. But, we have to do 1, 2 and 3.”

Council Member Callanan: “Right.”

Mr. Bowers: “Those are the overriding criteria. Once you get the population to meet state law, the next important criteria is to get it through the Justice Department, because they are very critical. I can tell you how the new Justice Department is. I used to know everybody in there all the way up to the Chief of the Voting Section. I know one young lady in there now. She called me one day. She said, ‘*Who’s the stupidest, me or you for still working.*’ I told her with my years, I’m probably crazier than you are. They’re very fair. I’ve had two plans, three plans already approved once you give them the information. That’s why I’m saying, let’s be very careful. You’ve got to give them total population by race, voting age population by race, registered voters by race, because we are one of the few states that’s got registered voters by race. You’ve got to give them data on elections since the last redistricting in which minorities participated and were candidates. You give them all that. You give them a recording of all your

meetings and anything published in the newspaper, and you should have a pretty good record of what's going on up there. And then, if you could get the minority support right up front, that helps."

Council Member Call: "I just think, a comment right up front, avoids split voting precincts. We don't have that now with what we had in 2000 plan. In looking at any plan that I've seen so far, that's just gonna be impossible to find a way to do."

Mr. Bowers: "Let me explain how the Justice Department looks at that. You only get a chance to redistrict once every 10 years. Voting precincts can be altered every year by the general census, but they'll tell you right now, you can change voting precincts to eliminate splits if you want to, but you don't get a second chance at redrawing your lines. If you remember, Richland County, back after the '90's Census tried a second time, and the court did not pass it. You only get one bite at the apple. So, you are gonna get one shot at redistricting and preclearance, but you can change voting precincts. We haven't changed any in the last year for the reason being the senate did not want any precinct changes until redistricting was completed. Hopefully, they have redistricted by, what we call, VTD, Voting Tabulation District, which is not synonymous with precinct to eliminate that. What I'm telling you – what's important is that you use the electronic processing to get the voter in the right place according to his address. We can do that. I'm over 911. We've got every address in the state. I can take all your addresses right now, take them back to my office, and call you back up, and tell you you're senate district, house district, congressional district, county council district, if you're in a school district, city district – what you live in, everyone of them. So, we will be running that through our GEO-coded, electronic system and getting it back to the registration boards so they can be sure. We found one county who, by name, will not be mentioned. In 2002, it had 2,800 people in the wrong house district, 2,800, and we redistricted the entire state that way, and sent it all back, and found 26,000 statewide in the wrong house district. So, we've already made plans in my office to GEO-code the entire registration list, and have it ready for the filing and for the election. You remember the big case they had in Charleston, where they had an apartment village in the wrong place? We ran that through our district, and it showed up right off the bat where they should have been. They had a local hearing, a state hearing, court hearing and a Supreme Court hearing. Think what that cost them for that one little error, and it cost a girl a job. So, yes, we can make some changes, and we'll be in a position to help you with the Registration Board with the process of where the people should be voting. See, we've got to do that anyway for the house, senate and congress. I had a call the other day. They wanted a map of the new senate district. I told him I couldn't do it for him..."

Council Member Callanan: "I think I was the one who called."

Mr. Bowers: "You were the one who called me?"

Council Member Callanan: "Well, I didn't talk to you. I talked to Wil."

Mr. Bowers: "Did he tell you he couldn't do it?"

Council Member Callanan: "Yeah."

Mr. Bowers: “Good; he’s doing a good job. He is keeping us totally neutral, so if and when it goes to court, and we get asked are we familiar with the house, senate and congressional plan, we can say no. So then, we can do like we did the last two decades and be assigned to federal court, to draw the plan for the federal court. That’s the senate and house philosophy on how we stay neutral in it. So, I don’t know where the senate districts are and house districts are – by design. Any questions? Let me say, this is a work in progress. It’s not a finished product. It’s a work in progress. We expect input from Council. We expect input from the public until we hammer it out and get a finished product at the end.”

Council Member Call: “You’ve got a question, Tim?”

Council Member Callanan: “Well, I’m just wondering – I think the obvious location to me, looking at these is, is District 3, but I don’t know where the – how you would get any of these other districts into – get those pockets of voters. I just don’t know. I just can’t figure it out. Do we have – you have up there that map that was in the packet for minority voters? That one, yeah. Can you zoom in on Goose Creek and a little over?”

Mr. Bowers: “But, you’ll notice, now, District 3 is not contiguous to either 6 or 7.”

Council Member Callanan: “Yeah, it is if you go across – it is to 8.”

Council Member Schurilknight: “If you look at District 6, it took a lot of the White vote out of that district to put into 8 – a bunch, so that can be put back into 6.”

Ms. Ewing: “And, for those of you not familiar with the map in the audience, red is White voters, and blue is Black voters.”

Mr. Bowers: “Blue is your heaviest percentage of minority.”

Mr. Robert Hauck, Berkeley County GIS: “The darker the blue, the higher the minority.”

Mr. Greg Rines, GIS Director: I think it can be like two people in the whole area. It’s kind of deceiving in a way. You can look at that and say, *‘oh, we’ve got some numbers there’*, but there could only be two people there.”

Mr. Bowers: “It can be one census block with two people in it, and you may have another one with 150...”

Council Member Callanan: “Yeah, that’s what I needed.”

Mr. Hauck: “The number in parenthesis is White. The number after that is minority.”

Council Member Callanan: “Can we zoom out a little bit? Well, District 3 is about 15 percentage points higher, well 10 percentage points higher than the other districts in African American. I mean, yeah, it is Black, percentage. I’m just trying to figure out where the pockets

are and whether they're accessible, because, like I said, if you have to get through 100 White voters to get to 50 African American voters, you know, it's moot."

Mr. Bowers: "No; it won't work."

Council Member Call: "If you could do that and get to 5, I believe you can do it."

Council Member Callanan: "Yeah, exactly."

Ms. Ewing: "But you can add the White voters to District 3..."

Council Member Callanan: "Well, I'm just saying, you have to have a clear path to be able to get there, so."

Council Member Schurilknight: "If you look at District 6, there's a clear path coming off Kitfield Road and Lyon's Beach Road where there's a big pocket of White voters on Hill Street, California Avenue that was originally in my district that was put in 8. That could be put back into District 6, right there. That's contiguous all the way."

Council Member Callanan: "What about St. Thomas Island? Yeah, there you go. Can you zoom in there? I can't see those numbers. It's 43."

Ms. Ewing: "Sixty Two?"

Council Member Call: "About 60."

Council Member Farley: "It's 68."

Council Member Callanan: "Yeah; because that's all one new subdivision in there, and it's easily contiguous to Daniel Island. That's an obvious one, I guess."

Council Member Call: "Obvious to what down there."

Council Member Callanan: "Obvious to – everything around that edge in the pink there?"

Council Member Call: "Yeah."

Council Member Callanan: "That's in Steve's district."

Council Member Call: "Ok."

Council Member Callanan: "So..."

Council Member Call: "That could go into his district?"

Council Member Callanan: “If you kept the blue – no, the pink could go into mine, and the blue stays in his.”

Council Member Call: “Right.”

Council Member Callanan: “I mean that’s – I’m just trying to find low-hanging fruit here.”

Mr. Bowers: “That’s the way you gotta do it. You gotta look at that area.”

Ms. Ewing: “Although, there’s 83 minority voters in that pink district, so wouldn’t that evade each other?”

Council Member Callanan: “No; if you add them – well, it’s a +5, right? No. Well, I’m just saying if – this is a +5, right? Am I right on that?”

Council Members agreed to the affirmative.

Council Member Callanan: “So, there’s no way, I can tell you right now that this number right here – 83 is African American votes?”

Mr. Hauck: “Correct.”

Council Member Callanan: “Why is this pink?”

Ms. Ewing: “Because it’s based on percentage.”

Council Member Call: “It’s the percentages, Tim.”

Mr. Bowers: “Blue is a heavy minority.”

Mr. Hauck: “Right.”

Council Member Callanan: “Well, I can tell you this too that, I would assume, that the African American vote is down here. So, I don’t know if there’s any way to get there. If you were to chop this off.”

Mr. Bowers: “Which is your left number, total?”

Mr. Hauck: “The left, in-front page is African American.”

Council Member Steve Davis: “I thought you said on the outside, initially.”

Ms. Ewing: “No, outside is African American.”

Council Member Callanan: “That gives you an example of how you have to get through.”

Ms. Ewing: “If you look at the blue, that’s 26.”

Mr. Bowers: “Nineteen, nineteen African Americans, zero, none African Americans. Like I said, it’s a work in progress. We’ll look at it. I’ll keep looking at it, and see what we can do. I think it’s worth the risk of taking that shot at it to try to at least protect the minority district.”

Council Member Call: “Would it be possible for Greg to get us each one of those – I’ll talk to Greg – one of these maps?”

Mr. Rines: “Sure.”

Ms. Ewing: “This is also available on that Council link that got e-mailed to everybody.”

Chairman Daniel Davis: “You’re not gonna be able to see the smaller numbers on a printed set.”

Council Member Call: “When it prints out, it’s blurred real bad.”

Mr. Rines: “You’d have to have a bigger map. We could certainly get a hard copy if you want.”

Council Member Call: “That’s what I’m talking about. Something about this size, do you have?”

Mr. Rines: “It wouldn’t be that size. It would be a lot bigger.”

Mr. Bowers: “Probably three feet by three feet.”

Council Member Call: “That would help us do what we’re talking about now. That would really help us with the issue that Tim brought up about trying to get these pockets.”

Chairman Daniel Davis: “Why don’t we print the biggest one we can and have it here in case anybody wants to come and work with it, and then you’ll be able to see the numbers. We’ll keep it in here, for example, and then anybody who wants to come by can use it.”

Council Member Call: “I’d like to have one I could mark on.”

Chairman Daniel Davis: “I’m talking about a great big, huge one.”

Council Member Call: “That’s what I’m talking about.”

Chairman Daniel Davis: “Ok.”

Council Member Callanan: “Well, could we get one, like, just for our districts? You know what I mean?”

Mr. Rines: “We can do that too.”

Mr. Bowers: “Yeah, you can break one up by districts.”

Council Member Callanan: “Then, this way, we don’t have to be messing with each other’s districts. We can look at our districts and figure out where we can...”

Mr. Bowers: “Let me make one suggestion is you look at changes. If you plan on adding something to your district or taking something away from it, at least converse with the person contiguous to that area...”

Council Member Callanan: “Right.”

Mr. Bowers: “...so you don’t have a yoyo, back and forth, back and forth, all the time, because the one you want to take something from may not want to give it up.”

Council Member Call: “I still would like to have a visual that I could mark up.”

Chairman Daniel Davis: “We can do that.”

Council Member Call: “It don’t have to be the huge one.”

Chairman Daniel Davis: “Well, I was thinking about – we’ll still have a large one, a hard copy that will show all the numbers, in case you want to...”

Council Member Call: “Can I get a hard copy that’s about this size.”

Chairman Daniel Davis: “Yeah, we can get that to you with no problem.”

Ms. Ewing: “But, you won’t be able to read the numbers on something that size. If you want to be able to read the numbers, you’ve got to get it...”

Council Member Call: “Well, we’ll be able to see the colors.”

Ms. Ewing: “While there’s a pause, I was going to hand out – this is an informational guide to the Section 5, Voting Rights Act and what is required under the law. Robert had actually come across this and shared it with me, and I thought it was real good information to give you an overview of what the Department of Justice is going to be looking for. I may have already sent it.”

Chairman Daniel Davis: “We need to get all our questions answered of Mr. Bowers while we’ve got him...”

Council Member Steve Davis: “The question I have, Mr. Bowers, for you, primarily, is apparently on this proposed redistricting plan, I think, we’re somewhere around a deviation of about three percent.”

Mr. Bowers: “A total of 5.44.”

Council Member Steve Davis: “Five percent, and there’s nothing outlandish about that number being increased as high as 10 or 11 percent?”

Mr. Bowers: “No, you can’t go over 10.”

Council Member Steve Davis: “because that’s the state law.”

Mr. Bowers: “That’s state law. What you want to be in your submission packet – they know the state law in Washington, so you won’t be able to say in your submission packet that this deviation is under 10 percent as per state law.”

Council Member Steve Davis: “Why should state law control an issue of this...”

Mr. Bowers: “That’s the way the Home Rule Act was set up back in 19?”

Ms. Ewing: “Seventy-three.”

Council Member Steve Davis: “I know the Home Rule Act. The only reason we’re involved in this 20-32 is because of the Home Rule to some degree is what I’m talking about. So, my question on a bigger scale in reference to issue Number 1, which you adhere to the constitutional requirement of one person, one vote, my issue is suppose the state puts you in an arbitrary deviation to really use his term of Gerrymandering or maintaining a Gerrymandering class. Where is the challenge in reference that the state law itself that is set at 10 percent deviation would be inherently unconstitutional upon its own self?”

Mr. Bowers: “That’s a maximum, not a minimum. You can always go below that.”

Council Member Steve Davis: “So, you’re telling me across the whole USA.”

Mr. Bowers: “Nope, nope; but the Justice Department and federal courts are looking at lower deviation. I can promise you that. If the house and senate and congressional plan goes to federal court, it will be, probably, plus or minus one percent in the house and senate. Congress will be as near perfect as they can get it drawn. I’ll be sitting there with three judges looking...”

Council Member Callanan: “One person.”

Mr. Bowers: “One person, you’re right. They couldn’t figure out who to cut in half. Since I was drawing it, I wasn’t gonna let it be me.”

[Laughter]

Council Member Steve Davis: “Mr. Bowers, you’ve never been in legislature, but what do you think the state rationale for the 10 percent deviation?”

Mr. Bowers: “I don’t have a clue. I know there’s no requirement for cities or school districts to even redistrict after the census. The requirement for the counties to redistrict is after the census and before the next election, but there’s no requirement for cities and school districts to redistrict, but we are recommending that they at least look at their districts to be sure, Number 1, they’re not way out of district line proportion and not way out of racial proportion.”

Council Member Steve Davis: “If you put me in a box initially, and the state passes a law that has you in a box at 10 percent deviation, even if it could violate or may violate the one man, one person vote, we’re stuck with it is, basically, what you’re telling me.”

Mr. Bowers: “One reason justices look at that too, if they approve something over, say 12 or 13 percent, and somebody challenges the Justice Department and it goes to federal court, guess what the court is gonna do? They are gonna cut it down as low as they can get it. So, then, you know, you’re in a box that way. The court is gonna draw it as near perfect as they can.”

Council Member Steve Davis: “I understand, but you told me the situations where the federal court is not so much concerned about the deviation, because deviation...”

Mr. Bowers: “I’m talking about federal court now.”

Council Member Callanan: “The Justice Department.”

Mr. Bowers: “The Justice Department.”

Council Member Steve Davis: “The Justice Department.”

Council Member Callanan: “That’s where it is.”

Mr. Bowers: “The federal court is very much concerned about deviation.”

Council Member Steve Davis: “Ok; well, we’re in the Fourth Circuit in this area. Trust me, I’m aware of that.”

Mr. Bowers: “The federal courts are very conscious of deviation. The Justice Department is conscious of the racial opposition/opportunity to elect some candidates.”

Council Member Steve Davis: “Yeah.”

Mr. Bowers: “Questions?”

Chairman Daniel Davis: “You guys have anything?”

Mr. Bowers: “I think you’ve got a great start at it. You’ve got a good start at it.”

Council Member Call: “Do you know of any situation in South Carolina or anywhere else where the deviation was allowed to be more than that applied if not the letter of the law at least the spirit of the law?”

Mr. Bowers: “I’ve done work in Texas, Alabama, Florida, Georgia. Five years ago, I was appointed to the New Hampshire Supreme Court – did theirs. North Carolina, now, they’re all staying around 3, 4, 5 – under 10 percent – every one of them. They’re staying around, I think, the two claims I just submitted in North Carolina, one of them is less than 2, and one of them is 3½, because we are anticipating, we’re preparing if we get sued for our plan to be the best one. And, you have to understand, my staff and I, when we develop and approve a plan, we keep a record, and we expect we’re preparing to be in court the next week. Whether we’re there or not, we’re prepared to be there the next week.”

Council Member Call: “I don’t know that, you know, looking at this list that it looks to me like the object of this list is to get it through it the first time, and not push the envelope. Don’t know if I want to take a chance.”

Mr. Bowers: “The first time with the Justice Department. You don’t have to have anybody sign off on yours. The house and senate plan has got to be signed by the governor. If you remember, in 1990, a Republican governor vetoed it. In 2000, a Democratic governor vetoed it. Each time, they sent it straight to a three-judge federal court. Charleston’s redistricting plan that they went through spent all that money with not a Section 5 challenge. Section 5 is where they review change. It was a Section 2 challenge. Section 2, basically, says while your plan may not have had the intent to discriminate, it has had the effect of discriminating. Judge Duffy was the judge on that, because I was assigned to Judge Duffy on that case. Their plan had the effect of discrimination. I mediated a Georgetown school district plan out of court. That’s where we got it, and the Justice signed off on it without any litigation, no cost to the county.”

Council Member Steve Davis: “And Mr. Bowers, just from a historical standpoint, Berkeley County has some unique history. Berkeley County was one of those counties there was never in a lawsuit in reference to the eight-member district that we have. Berkeley County always worked in a spirit of trying to ensure that there was minority representation. And, I just hope that this Council still shares that concern, because the moving factor as it stands right now would be a lawsuit from a minority standpoint based on these numbers that are projected, because it would create a situation where there’s no minority representation on County Council.”

Mr. Bowers: “You are in good shape compared to some of our counties. Some of them, with the growth they’ve had, you cannot draw – my friend, James Frasier, over in Horry County is the best example.”

Council Member Steve Davis: “Well, I’ll tell you. I’ve got one horse at the house most of the time. His name is Sugar Jack, and Jack got a few horses, but the horse that is the most important to me is Sugar Jack, and I hear you. But, I’m just sharing that historically, Berkeley County has never been put in that position, and I hope that in reference that we work in a spirit that there is some, because these populations can be decreased also in a manner and consistent with these deviations. But, as it stands right now, if these plans were to go forward, then there would potentially be no minority representation on County Council.”

Mr. Bowers: “That’s the problem with changing the census. You cannot use the same numbers – the court’s gonna use, the Justice Department is going to use the same database that we’ve used and ya’ll are using in Berkeley County. I will say this, if you go up too close to 10 percent to try to protect the two minority districts, and it goes to court, the court is going to honor the state law, as well as the federal law. So, if you go over 10, then you are in violation of the law there.”

Council Member Call: “We have, what is it, 24 percent minority in Berkeley County?”

Council Member Pinckney: “Twenty-five.”

Mr. Bowers: “Two out of eight.”

Council Member Call: “And, that’s two out of eight.”

Council Member Steve Davis: “That’s one-fourth.”

Council Member Call: “We’re gonna have to do something with these numbers in (Districts) 7 and 8.”

Mr. Bowers: “That’s why I’m suggesting...”

Council Member Callanan: “Well...”

Mr. Bowers: “...and lower the deviation.”

Council Member Callanan: “I mean...”

Council Member Call: [Inaudible]

Council Member Callanan: “You know, it’s the assumption that every White person is not gonna vote for an African American, which is obviously incorrect. You know, and I think the congressional vote will take heed on that, but...”

Council Member Steve Davis: “Which congressional vote?”

Council Member Callanan: “Tim Scott; oh, I mean...”

Council Member Steve Davis: “He’s not a Democrat.”

Council Member Callanan: “That’s my point.”

Council Member Steve Davis: “That’s my point.”

Council Member Callanan: “Well, I mean, well, you make it this way – the other way around that, that White folks aren’t gonna vote for a Black person. That’s what I said.”

Council Member Steve Davis: “Well, they will if he’s a Republican.”

Council Member Callanan: “What?”

Council Member Steve Davis: “If he’s a Republican, I guess they do.”

Council Member Callanan: “So are – but we’re not Gerrymandering, based on party are we?”

Council Member Steve Davis: “I don’t know what they’re doing...”

Council Member Callanan: “Are we doing it on party?”

Council Member Steve Davis: “I don’t know.”

Council Member Callanan: “Because, we can do it based on...”

Council Member Call: “You can’t do it on party.”

Council Member Callanan: “Ok; but that’s what you’re talking about.”

Council Member Steve Davis: “I’m not talking about that. You’re saying...”

Council Member Callanan: “Well, you asked for party... [inaudible]”

Council Member Steve Davis: “You’re saying that – you said that there was clerical data to suggest that White folks will vote for Black folks.”

Council Member Callanan: “Yeah.”

Council Member Steve Davis: “That’s what you’re telling me.”

Council Member Callanan: “Yeah.”

Council Member Steve Davis: “I said in certain instances they will.”

Council Member Callanan: “Right; so what, so what does it matter?”

Council Member Steve Davis: “Well, it does matter to some degree, because...”

Council Member Callanan: “I just want to make sure you’re more about not protecting race, but protecting race and party.”

Council Member Steve Davis: “No; I don’t care about party, I don’t care nothing about party.”

Council Member Schurlknight: “[Inaudible] ...somebody who puts words in peoples’ mouths, you know. Ga-dan; Jesus.”

Chairman Daniel Davis: “Let’s, let’s - this...”

Mr. Bowers: “We don’t have party in the numbers to be right.”

Chairman Daniel Davis: “We do not, and that philosophical...”

Council Member Callanan: “And, I didn’t bring up Republican or Democrat; you did.”

Chairman Daniel Davis: “Ok.”

Council Member Callanan: “And so, before your little rude comment, Jack...”

Chairman Daniel Davis: “Mr. Callanan.”

Council Member Callanan: “I didn’t bring it up.”

Chairman Daniel Davis: “Mr. Callanan; Mr. Callanan...”

Council Member Callanan: “I had the floor; I had the question.”

Chairman Daniel Davis: “Mr. Callanan, this is my meeting. I am asking you to please refer your questions to Mr. Bowers, and let’s quit the...”

Council Member Callanan: “Which I was before I was interrupted, so...”

Chairman Daniel Davis: “...and I am trying to establish order now.”

Council Member Callanan: “A point, a preference.”

Chairman Daniel Davis: “Would you address Mr. Bowers...”

Council Member Callanan: “Fine.”

Chairman Daniel Davis: “...and let’s move on.”

Council Member Callanan: “My question to you is this. What is the process once this goes through?”

Mr. Bowers: “Once you finish your plan, it goes to the US Justice Department.”

Council Member Callanan: “What happens if they reject it?”

Mr. Bowers: “You come back to where you’re at, and you start again.”

Council Member Callanan: “Ok; and then, how many chances do they – how many bites do you get from the apple?”

Mr. Bowers: “You either get it right; or til they enjoin your election in 2012.”

Council Member Callanan: “I can’t hear, because they were talking.”

Mr. Bowers: “They’d enjoin your election in 2012. You will stay in office like they did in Sumter. Sumter stayed in litigation in the office so long, the only way they could get off Council was to die.”

[Laughter]

Mr. Bowers: “That ain’t no joke. They could not get off Council. You submit a plan to Justice. If they pre-clear it, then you can enforce it. If they don’t pre-clear it, you come back and start again, and make adjustments like they want and try to get a pre-clearance a second time.”

Ms. Ewing: “So, if we didn’t have – if we don’t have an approved plan by the time, I guess, the primaries, then we would not be able to hold the primaries.”

Mr. Bowers: “Absolutely not; you’re right. You have to have approval. That’s why we recommend that you start in... [inaudible] ...October, so at the end of October, you’ve got 60 days, November and December; 60 more days, January and February. So, if they turn it down the first time, you’ve got time to try again.”

Chairman Daniel Davis: “Is there a number of Public Hearings?”

Mr. Bowers: “No; I’d have two or three.”

Chairman Daniel Davis: “Ok.”

Mr. Bowers: “Don’t have more than that – two or three. Georgetown had one all over the county. They had one at different high schools all over the county, and that plan’s already gone to Washington.”

Council Member Fish: “Wouldn’t it be helpful to have a Public Hearing and have some input from people?”

Council Member Callanan: “We have to, don’t we?”

Council Member Call: “Yeah.”

Mr. Bowers: “You don’t have to, but I recommend you do.”

Council Member Farley: “That’s what I think the state requires.”

Mr. Bowers: “There’s nothing in the state law that requires you to have a Public Hearing.”

Council Member Farley: [Inaudible]

Ms. Ewing: “We could print out big maps and have them at the Council Meeting.”

Mr. Bowers: “I would suggest you might even want to put a map in the court house or somewhere in a public library or something like that just to show people. That’s what we’re doing in one model of the other counties.”

Ms. Ewing: “What I’m recommending from a procedure standpoint, as Mr. Bowers suggested, is adopt a resolution with criteria. You know, his criteria is kind of tried and true. I would recommend that we adopt those; go ahead and set up some hearings for – get some dates for public hearings. This does require an ordinance, so you’re looking at three readings, and then we will get this to Justice just as soon as we can. I had forgotten about the primaries, actually, so I was looking more at a June deadline, but now I’ve got to back it up...”

Mr. Bowers: “You’ve gotta back it up.”

Ms. Ewing: “If we can get the October date, that would be great. November may be more realistic, but – and then, obviously, when we go through the pre-clearance process, I will need assistance from Council Members as far as contact names and that kind of thing for when we submit. I would like to go ahead and for the August meeting, draft up a resolution for ya’ll’s review and approval if that meets with everybody, and it’s subject to your changes, of course. But, we’re basically be just adopting Mr. Bowers’ criteria.”

Chairman Daniel Davis: “Ok; any other questions for Mr. Bowers before we...”

Ms. Ewing: “I think Robert had something.”

Mr. Hauck: “I just want to make one quick comment that the parenthesis numbers is White people, and the reason this was shaded pink, which would be majority White, is because the map comes up close to 50 percent, and I have this, a computer color-code – 50 percent as

White, so that's why... [inaudible] ...This map is on the website, so ya'll can look at it and get all those numbers."

Mr. Bowers: "That was very helpful to me to be able to go on the website and pull up all the information before I came down here, so I got to review it before I came down."

Chairman Daniel Davis: "Bobby, thank you for coming down, and I'm sure we'll see you next week."

Mr. Bowers: "If you hear the same here you hear tonight, smile and act like you never heard it before."

[Laughter]

Mr. Bowers: "Because, I'll probably do the same thing again."

It was moved by Council Member Schurlnknight and seconded by Council Member Farley to adjourn the Special Meeting of Council. The motion passed by unanimous voice vote of Council.

Meeting adjourned at 7:00 p.m.

August 22, 2011
Date Approved